

Reed	Sherman	Torres (CA)
Reschenthaler	Sherrill	Torres (NY)
Rice (NY)	Sires	Trahan
Rice (SC)	Slotkin	Trone
Rodgers (WA)	Smith (MO)	Turner
Rogers (AL)	Smith (NE)	Underwood
Rogers (KY)	Smith (NJ)	Upton
Rose	Smith (WA)	Valadao
Rosendale	Smucker	Van Drew
Ross	Soto	Van Dуйne
Rouzer	Spanberger	Vargas
Roy	Spartz	Veasey
Roybal-Allard	Speier	Wagner
Ruiz	Stanton	Walberg
Ruppersberger	Stauber	Walorski
Rutherford	Steel	Waltz
Ryan	Stefanik	Wasserman
Salazar	Steil	Schultz
Sánchez	Steube	Watson Coleman
Sarbanes	Stevens	Weber (TX)
Scalise	Stewart	Webster (FL)
Scanlon	Strickland	Wenstrup
Schakowsky	Suozzi	Westerman
Schiff	Swalwell	Wexton
Schneider	Taylor	Wild
Schrader	Tenney	Williams (GA)
Schrier	Thompson (CA)	Williams (TX)
Schweikert	Thompson (MS)	Wilson (FL)
Scott (VA)	Thompson (PA)	Wilson (SC)
Scott, Austin	Tiffany	Wittman
Scott, David	Timmons	Womack
Sessions	Titus	Young
Sewell	Tonko	Zeldin

## NAYS—40

Bowman	Jacobs (CA)	Payne
Bush	Jayapal	Pingree
Chu	Johnson (GA)	Pocan
Clarke (NY)	Kelly (IL)	Porter
Davis, Danny K.	Lee (CA)	Pressley
DeGette	Levin (MI)	Rush
DeLauro	Lowenthal	Stansbury
DeSaulnier	McCollum	Takano
Doyle, Michael	McGovern	Tlaib
F.	Meng	Velázquez
Evans	Moore (WI)	Waters
Garcia (IL)	Nadler	Welch
Grijalva	Ocasio-Cortez	Yarmuth
Huffman	Omar	

## ANSWERED “PRESENT”—4

Castro (TX)	Gomez
Cohen	Massie

## NOT VOTING—5

Brady	Murphy (NC)	Vela
Lesko	Simpson	

□ 1634

So (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## MEMBERS RECORDED PURSUANT TO HOUSE RESOLUTION 8, 117TH CONGRESS

Axne	Hagedorn (Carl)	Steube
(Spanberger)	Kirkpatrick	(Franklin, C.
Bowman (Tlaib)	(Stanton)	Scott)
Cárdenas	Lawson (FL)	Strickland
(Gomez)	(Evans)	(Jeffries)
Doggett (Raskin)	Meng (Jeffries)	Swalwell
Frankel, Lois	Payne (Pallone)	(Gomez)
(Clark (MA))	Pingree (Kuster)	Trone (Connolly)
Gaetz (Greene	Rush	Wilson (FL)
(GA))	(Underwood)	(Hayes)
Gonzalez,	Sires (Pallone)	
Vicente	Speier (Scanlon)	
(Gomez)		

## PROTECT OLDER JOB APPLICANTS ACT OF 2021

Ms. BONAMICI. Mr. Speaker, pursuant to House Resolution 716, I call up the bill (H.R. 3992) to amend the Age Discrimination in Employment Act of 1967 to prohibit employers from limiting, segregating, or classifying applicants for employment, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 716, in lieu of the amendment in the nature of a substitute recommended by the Committee on Education and Labor, printed in the bill, an amendment in the nature of a substitute consisting of the text of Rules Committee Print 117-14 is adopted and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

## H.R. 3992

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

*This Act may be cited as the “Protect Older Job Applicants Act of 2021” or “POJA Act of 2021”.*

**SEC. 2. PROHIBITION AGAINST LIMITING, SEGREGATING, OR CLASSIFYING APPLICANTS FOR EMPLOYMENT.**

*Section 4(a)(2) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(a)(2)) is amended—*

*(1) by inserting “or applicants for employment” after “employees”, and*

*(2) by inserting “or as an applicant for employment” after “employee”.*

The SPEAKER pro tempore. The bill, as amended, is debatable for 1 hour equally divided and controlled by the chair and ranking minority member of the Committee on Education and Labor or their respective designees.

The gentlewoman from Oregon (Ms. BONAMICI) and the gentleman from Virginia (Mr. GOOD) each will control 30 minutes.

The Chair recognizes the gentlewoman from Oregon.

## GENERAL LEAVE

Ms. BONAMICI. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and insert extraneous material on H.R. 3992, the Protect Older Job Applicants Act of 2021.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Oregon?

There was no objection.

Ms. BONAMICI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the Protect Older Job Applicants Act of 2021.

Protecting all workers from workplace discrimination is of the utmost importance. Unfortunately, older workers have disproportionately been affected by the COVID-19 pandemic with more workers over the age of 65 leaving the workforce in 2020 than in any year over the last six decades.

The Protect Older Job Applicants Act of 2021 would help address discrimination older workers face in the hiring process, and it is an especially important step toward helping older workers reenter the workforce as the Nation recovers from the COVID-19 pandemic.

Currently, the disparate impact provision in the Age Discrimination in Employment Act, the ADEA, covers older employees seeking relief from age

discrimination, but not older job applicants. The bill we are considering today would clarify the disparate impact provision and make clear that older job applicants, not just older employees, are protected.

This bill is a commonsense fix to the ADEA that would help protect workers from ageist hiring practices. I urge my colleagues to support this bill.

Mr. Speaker, I include in the RECORD a Statement of Administrative Policy in support of H.R. 3992, the Protect Older Job Applicants Act of 2021.

## STATEMENT OF ADMINISTRATION POLICY

H.R. 3992—PROTECT OLDER JOB APPLICANTS ACT OF 2021—REP. GARCIA, D-TX, AND 62 COSPONSORS

The Administration supports House passage of the Protect Older Job Applicants (POJA) Act of 2021. The legislation would amend the Age Discrimination in Employment Act (ADEA) of 1967, which prohibits, among other actions, age-based discrimination in hiring, to specifically prohibit employers from limiting, segregating, or classifying job applicants on the basis of age.

The POJA Act of 2021 provides a critical clarification to support older Americans during recruitment and hiring, ensuring the ADEA's nondiscrimination protections extend fully to older job applicants.

Workplace age discrimination, including at the application stage, prevents people from fully accessing the American dream and limits the contributions that they can make to our shared prosperity. Ensuring equitable access to employment is a priority for the Administration. The Administration supports this legislation that protects older job applicants.

Ms. BONAMICI. Mr. Speaker, I reserve the balance of my time.

Mr. GOOD of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in opposition to H.R. 3992, the more appropriately named profiting off of older job applicants act.

This, like so many other Democrat proposals, is a trial lawyer payout disguised as a win for older workers. Democrats are addicted to inventing problems that fit their slanted narrative of American life. To liberal Democrats, older workers are vulnerable employees who can't cut it in the modern economy, and that could not be further from the truth. In fact, employment for workers ages 65 and older tripled from 1988 to 2018, the last 30 years, while employment for younger workers only grew by a third.

During that same time, the number of workers aged 75 and older nearly quadrupled. Despite what Democrats may have you believe, there are several existing laws already protecting Americans of all ages against discrimination in the workplace.

One of those legal protections which today's bill would amend is the Age Discrimination and Employment Act of 1967, or the ADEA. It prohibits employment discrimination based on age for job applicants and employees at least 40 years old and up, as it should. Discrimination is wrong. It is immoral, and it must be vigilantly addressed.

But this bill radically expands the definition of discrimination against

older job applicants by authorizing claims against a disparate impact theory; again, what happens, not what is intended by the employers. This needlessly interferes with employers' routine recruitment and hiring practices.

The ADEA already prohibits discrimination against job applicants, but the ADEA does not authorize disparate impact claims by job applicants.

Congress has long recognized that addressing different forms of discrimination require different laws. For example, Congress did not include age in the Civil Rights Act of 1964 but passed a separate and distinct law in 1967 prohibiting age discrimination; once again, the ADEA.

Yet, H.R. 3992, this bill, abandons congressional precedence and imprudently allows disparate impact claims by job applicants under the ADEA. The most destructive impact of this bill would be the assault on existing programs that employers are using all across the country which creates job opportunities for workers, students, and prospective employees.

□ 1645

Under this bill, routine recruiting efforts at high schools, Job Corps centers, and colleges, including job fairs, would be legally suspect because these students are typically younger, on average.

In addition, simply posting a job opening on a job search website could land an employer in a world of trouble because users of those websites tend to be younger.

Apprenticeship and internship programs would also be threatened because the participants tend to be younger, and employers tend to hire full-time employees from these programs.

These examples are not mere speculation. The AARP, one of the Democrats' favorite big donors, has already backed class action litigation challenging college recruitment as violating the ADEA.

If this bill is enacted into law, a tsunami of lawsuits attacking these valuable and effective programs would follow, putting millions of job opportunities in jeopardy and forcing employers into court to defend them. But that is what our friends across the aisle seem to want.

Endangering hiring practices, when there are over 10 million unfilled jobs, flies in the face of common sense and good governance. Surely, my Democrat colleagues know better.

They should also be aware of their own hypocrisy, as I can assure you that every Member of Congress has recruited from colleges, universities, or on job search sites to fill staff and intern positions, the vast majority of which have been hires of younger age.

By failing to hold even a single hearing on this bill and refusing to adopt any commonsense Republican amendments, Democrats exposed their true intentions, to rush through yet another

piece of misguided legislation to appease the left.

Additionally, Democrats refused to allow floor debate on commonsense amendments offered by Republicans to protect job opportunities for workers and determine whether the bill is even necessary.

For example, Representative MILLER-MEEKS submitted an amendment to make sure the bill does not prohibit an employer from recruiting or interviewing students attending high schools, Job Corps centers, colleges, or universities.

Representative ALLEN submitted an amendment to ensure the bill does not prohibit employers from operating apprenticeship or internship programs, and Representative LETLOW submitted an amendment to protect employers' ability to post job openings on job search websites.

If this were truly about crafting high-quality legislation that protects older job applicants, then this bill's sponsors should have been clamoring for a thorough and bipartisan analysis of this bill.

This legislation was first introduced in June of this year and considered by the committee only a month later. Now, we are here debating it on the floor without any meaningful review.

Because H.R. 3992 was rushed through the legislative process, we cannot even begin to understand its sweeping and unintended consequences. But what we do know about this bill should concern every Member of this body.

The profiting off older job applicants act will jeopardize job opportunities for millions of Americans, both young and old, and will make the Democrats' trial lawyer friends yet richer, once again.

Congress and the Supreme Court have long recognized that different forms of discrimination require different legal solutions. This bill abandons that precedent and will not only set off a slew of legal challenges, but it will also hamstring our job creators attempting to rebuild during a once-in-a-century pandemic and inflation crisis.

Mr. Speaker, I strongly urge a "no" vote on this misguided legislation, and I reserve the balance of my time.

Ms. BONAMICI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to correct the record on a couple of points. In fact, the committee did have a hearing on this subject on March 18, 2021, in the Subcommittee of Civil Rights and Human Services. It was a hearing called "Fighting for Fairness: Examining Legislation to Confront Workplace Discrimination."

Additionally, my colleague's argument simply misstates the law with regard to places like college campuses or online recruitment. For example, employers will always have the freedom to choose the time, place, and manner in which they recruit. Whether it be on a college campus or LinkedIn, employers face no risk of liability if they can

show it was based on reasonable factors other than age, such as a larger pool of highly trained individuals from which to recruit.

The argument that anyone who wasn't available to be recruited on LinkedIn or enrolled in college would be able to sue an employer for age discrimination is a misunderstanding of this law, Mr. Speaker.

Finally, Title VII has outlawed disparate impact discrimination since 1972. If there are any doubts that these sorts of laws would wipe out recruiting practices, we would have seen those consequences. In fact, this law is to correct a couple of circuits that have gone a different way from the rest of the country. In 9 out of 11 circuits, it is already the law. So any parade of horrors that my colleague is suggesting, we would have seen that already and we have not.

Mr. Speaker, I yield 5 minutes to the gentlewoman from Texas (Ms. GARCIA), the sponsor of the bill.

Ms. GARCIA of Texas. Mr. Speaker, I rise in support of my bill, H.R. 3992, the Protecting Older Job Applicants Act of 2021.

I want to start by thanking my Republican co-lead on this bill, the dean of the House, Congressman DON YOUNG of Alaska. I also want to thank Chairman BOBBY SCOTT, my Democratic co-lead, for his tireless leadership to protect all workers, but especially older workers and older jobseekers.

Mr. Speaker, this bill will fix a loophole in current law that fails to protect older job applicants during the hiring process.

Despite what many people assume, older job applicants are not protected under the current Age Discrimination in Employment Act protections, commonly called ADEA.

Mr. Speaker, my bill seeks to fix this. This bill would allow older job applicants to bring claims for disparate impact discrimination hiring against employers.

While that may sound like legal technicalities and legal mumbo-jumbo to some people watching back home, Mr. Speaker, disparate impact claims are very, very important. They are important because some hiring practices might seem age-neutral on their face, but they actually impact job applicants that are older disproportionately.

The bill would clarify the Age Discrimination in Employment Act to give job applicants the right to bring these claims forward. Three-fourths of workers age 45 and older blame age discrimination for their lack of confidence in finding a new job.

But it is not just simple statistics. It is about real people and real stories.

It is like one of my neighbors, an engineer who can't find meaningful work after losing his job. He is about 60, but he is always told he is too experienced and overqualified. But he says it is all about his age.

It is about Rebecca in California, who is age 75, forced to provide her birth



Pro Tip: Claire Turner said it's not enough to simply acquire knowledge and skills—you have to be able to communicate those assets to potential employers, while still sounding humble. For instance, if you have always been a dependable worker, you would say something like, "Past employers say my attendance is perfect . . . you want to say people 'say' I am good at this. That's always a great way to deliver that message," Turner said.

A bright spot: Turner said she is seeing evidence that the tight job market created by a low unemployment rate is helping older workers who are unemployed.

"Employers are very open to older workers that they may not have been before," Turner said.

We checked back with Hinton four months after our first visit. She has seen no sign of that new openness to older workers. Hinton's situation had become more desperate.

A few temporary gigs had come and gone, but she had yet to land a permanent job, despite decades of customer service experience, much of it in management.

The lack of employment was impacting most aspects of her life:

Housing: "Of course, the house, we don't want to lose it. It may get to that point—not maybe soon—but maybe in the next six (months) to a year."

Health: "I have medication I can't afford so I don't take it."

Retirement funds (which have depleted some): "I don't even want to check my Fidelity account."

We asked her how many jobs she has applied for since she lost permanent employment two years ago.

"Oh my God!" she said. "I would say . . . over 250. I got out of that . . . maybe 10 interviews."

That lines up with a 2017 study done by the Federal Reserve Bank of San Francisco, in which researchers sent out tens of thousands of fictitious applications from different aged artificial applicants who had similar backgrounds. They found that younger workers were significantly more likely to get a call back from prospective employers than older workers were.

"I'm articulate," she said. "I have an energy. I'm not dead. Whatever the curse is . . . whatever it is it needs to go away."

Worried that her expansive resume might make her look overqualified (and over age), she shortened it from four pages to two.

Pro Tip: Claire Turner at The Senior Source said, "When I was looking, I had 25 resumes. Every single word was true, but I had three different careers. We see all the time people walk in with a resume that is very impressive, with all these years of experience. They present that for a customer service position and there is no correlation. The employer doesn't even understand why you applied. So it is a matter of tailoring your resume. It is definitely honest and factual; it is just showing things that are relevant. The industry standard is that people only show the last ten years."

As we wrapped up our second visit with Hinton, she was still filling out applications. But she had also just received another rejection email.

"It says, 'Dear Diana, thanks for your interest in our customer service position. Unfortunately you have not been selected to continue in our process for this position.'"

Her dog, Maxwell, rests at her feet.

"Maybe he is my calm," Hinton said. "He's calming me."

Hinton wonders if she will ever leave him again to go back to work.

"I am pretty strong, but I am almost sliding down, and I have to keep telling myself, 'Come on, Diana, you can do this.' I didn't think it was going to be this hard."

Ms. GARCIA of Texas. Mr. Speaker, this bill will help people trying to recover from this pandemic, including people who lost their job in the middle of their career who now fear they will never work again because of discriminatory hiring practices.

This is not about trial lawyers. It is not anything about what some of my colleagues across the aisle have talked about. It is just a simple clarification bill. It clarifies that job protections for older Americans begin at the time of the application.

I want to thank the AARP, the National Council on Aging, the Leadership Council of Aging Organizations, the American Federation of Government Employees, and the White House for supporting efforts and this bill.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Ms. BONAMICI. Mr. Speaker, I yield an additional 2 minutes to the gentlewoman from Texas.

Ms. GARCIA of Texas. Mr. Speaker, I include in the RECORD the letters of endorsement for this bill from the AARP and the National Council on Aging that I just mentioned.

AARP,  
September 27, 2021.

HON. NANCY PELOSI,  
Speaker of the House,  
House of Representatives, Washington, DC.

HON. KEVIN MCCARTHY,  
Republican Leader,  
House of Representatives, Washington, DC.

DEAR SPEAKER PELOSI AND LEADER MCCARTHY: On behalf of our nearly 38 million members and all older Americans nationwide, AARP writes in support of H.R. 3992, the Protect Older Job Applicants Act (POJA), important legislation sponsored by Rep. Sylvia Garcia (D-TX) to protect older job applicants against age discrimination.

Older workers are valuable assets to their employers and the economy, and additional protections are needed as the country recovers from COVID-19. Despite their value, 78 percent of older workers reported having seen or experienced age discrimination in the workplace in 2020, up markedly from 61 percent in 2018. The pandemic has significantly diminished the job prospects and future retirement security of older workers. Americans age 55 and up experience long-term unemployment at a higher rate compared to younger job seekers and age discrimination makes it harder for them to return to the workforce.

We are pleased that this bill extends Age Discrimination in Employment Act (ADEA) protections to job applicants so everyone will have an equal opportunity when applying for a job. H.R. 3992 complements the Protecting Older Workers Against Discrimination Act (H.R. 2062), a bipartisan, common-sense bill that the House of Representatives passed on June 23. POJA goes a step further to ensure the legal rights of applicants for jobs are protected as well.

AARP strongly supports POJA and urges you to enact it as soon as possible:

Sincerely,

BILL SWEENEY,  
Senior Vice President,  
Government Affairs.

NCOA,  
NATIONAL COUNCIL ON AGING,  
July 23, 2021.

Hon. SYLVIA R. GARCIA,  
Washington, DC.

DEAR CONGRESSWOMAN GARCIA: On behalf of the National Council on Aging, I am pleased to endorse your legislation to strengthen protections for older workers under the Protect Older Job Applicants Act of 2021 (H.R. 3992).

Ageism is one of the last socially acceptable forms of discrimination in our society—and it remains stubbornly ingrained in too many workplaces. AARP research shows that in 2020, nearly 80 percent of older workers reported having seen or experienced age discrimination at work.

As age discrimination has increased during the pandemic, so have job losses among older workers. Nearly 2 million workers aged 55 and older were unemployed in June, and 55.3 percent were long-term unemployed (27 weeks or longer), a rate that exceeds that of their younger counterparts. Research from The New School Schwartz Center for Economic Policy Analysis reveals that another 1.7 million older adults abandoned the job search and retired earlier than anticipated, setting many of them up for financial insecurity in their later years.

As Congress takes steps to promote economic recovery and job creation and placement, Age Discrimination in Employment (ADEA) protections must be restored and strengthened. In 2019, the 7th U.S. Circuit Court of Public Appeals (Kleber v. CareFusion Corp., No. 17-1206) ruled that ADEA protections apply only to current employees and do not extend to external applicants. The Protect Older Job Applicants Act will restore the original ADEA intent and clarify and codify these crucial protections for older workers seeking new employment.

It's time to treat age discrimination the same as every other unlawful bias in the workplace. We applaud your leadership on behalf of older workers and urge Congress to pass your legislation quickly to ensure they have equal access to employment opportunities as the economy recovers and into the future.

Sincerely,

RAMSEY ALWIN,  
President and CEO.

Ms. GARCIA of Texas. Mr. Speaker, together we can and will protect older workers during the hiring phase of employment with this bill. Everyone deserves a shot at the American Dream, regardless of their age. This is common sense. I urge my colleagues to vote "yes" on this bipartisan bill, protecting our older workers.

Mr. GOOD of Virginia. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. KELLER).

Mr. KELLER. Mr. Speaker, we heard about the justification for this legislation, and we are discussing older job applicants. Just some context that I would like to add about how well older job applicants and workers have been faring in recent decades.

According to the Bureau of Labor Statistics, for workers age 65 and older, employment tripled from 1988 to 2018, while employment among younger workers only grew by about one-third.

Among people age 75 and older, the number of employed people nearly quadrupled, increasing from 461,000 in 1998 to 1.8 million in 2018.

The labor force participation rate for older workers has been steadily increasing since the late 1990s, while participation rates for younger age groups either declined or flattened during the same period.

Over the past 20 years, the number of older workers on full-time work schedules grew 2½ times faster than the number working part time.

Full-time employees are now a majority of older workers. They were 61 percent in 2018, up from 46 percent in 1998.

These statistics paint a picture of rising full-time employment among older workers, and they do not portray rampant discrimination against older job applicants.

As the economy recovers from the pandemic, older workers will continue to prosper.

H.R. 3992 is yet another Democrat bill in search of a problem. It will result in an avalanche of class action litigation against employers for using standard, reasonable recruiting methods, and I encourage a “no” vote on the bill.

Ms. BONAMICI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to note that the reality is that there is substantial evidence that older workers are routinely harmed by plausibly neutral but age-discriminate hiring practices.

For example, in 2017, the Federal Reserve Bank of San Francisco conducted a study on age discrimination and hiring by sending similar resumes to 13,000 job openings in 12 cities, totaling 40,000 applicants. For all five job position types they studied, the callback rate was higher for younger applicants and lower for older applicants, consistent with age discrimination in hiring.

Mr. Speaker, I yield 5 minutes to the gentlewoman from Texas (Ms. JACKSON LEE).

□ 1700

Ms. JACKSON LEE. Mr. Speaker, I thank the Speaker and I thank the manager very much, and I thank Congresswoman GARCIA of Texas for her leadership and sponsorship of H.R. 3992, Protect Older Job Applicants Act. It is long overdue and an important initiative.

Words from Patti Temple Rocks, communications professional, really capture what this bill is about: “I was still on my game, but I was being moved . . . to make room for someone younger.”

Let me be very clear. There is a great opportunity for all of us to be employed, and that is what this legislation says. It is specifically making sure that every American worker is protected. Specifically, this bill will make it unlawful to limit, segregate, or classify job applicants in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as a job applicant because of such individual's age.

This bill will include the job application process in ADEA's antidiscrimination provisions and, again, disallow anyone from classifying you and discriminating because of age.

H.R. 3992 would give external candidates the express right under Federal law to bring these types of claims against employers. What I would simply say to my friends, this is to prohibit but it is also to prevent or intervene so that employers can know the right things to do.

According to AARP, one in four workers age 45 and older have been subjected to negative comments about their age from supervisors or coworkers, and 76 percent age discrimination find that as a hurdle in helping to find a new job.

We also recognize that there is a lot of talent with older workers. Paradoxically, what most companies do not seem to understand is that older workers possess a depth of knowledge and experience that is worth paying for and is not easily replaced and can be tapped in from many different ways; and, as well, having a mix of people of all generations, able and ready, and disabled, if you will, to work alongside of each other.

“People walk out of companies now with an enormous amount of intellectual property in their heads,” says Paul Rupert, the founder and CEO of Respectful Exits, a nonprofit consulting firm that is raising corporate awareness about age discrimination. “They know things that are essential to the company's success, and if that knowledge is not captured and transmitted to the next generation, that company is losing a tremendous chunk of capital, and it will eventually pay a price.”

So what is the point? The point is to recognize how important it is to ensure that we don't discriminate. In fact, women age 40 are finding that if they lose a job they, too, are being discriminated against in terms of getting a job.

I want to, again, salute the sponsor of this legislation, the manager of this legislation, and of course, the chairman of the Education and Labor Committee, Chairman SCOTT, along with all of those who supported this to ensure this is about fairness.

As a member of the Judiciary Committee, we always promote equal justice. We partner with the Education and Labor Committee in its work on equal justice. So this is legislation that provides opportunities for equal justice, and I would ask my colleagues to support this bill, H.R. 3992, Protect Older Job Applicants Act. But more importantly, let's protect the intellectual capital of all Americans, every job applicant.

Let there not be discrimination against you for race or color or creed or disability or gender or anything else, and certainly have respect for that intellectual capital that older American workers bring to the workforce. Let's celebrate it; let's have a

good time with it; and let's build our companies on all of this genius that happens to be the American workers now today.

Mr. Speaker, I ask for support of the legislation.

Mr. Speaker, I rise today in support of H.R. 3992, the “Protect Older Job Applicants Act,” which will amend the Age Discrimination in Employment Act of 1967, which prohibits age-based discrimination in hiring, to specifically prohibit employers from limiting, segregating, or classifying job applicants on the basis of age.

People of all ages, but especially older applicants, must be protected from discriminatory practices and loopholes that hurt their chances to get a job, especially as we have seen that older American workers have disproportionately experienced long-term unemployment in the COVID economy.

The federal Age Discrimination in Employment Act (ADEA) of 1967 was passed to prohibit age-based discrimination for current employees and job applicants.

However, two federal circuit court decisions over the last five years have ruled that some provisions of the ADEA's federal anti-age discrimination protections only applied to current employees, not job applicants.

In 2016, the 11th Circuit case *Villarreal v. R.J. Reynolds Tobacco Company* held that the ADEA disparate impact statute only covers employees, but not older applicants, and in 2019, the 7th Circuit adopted the same interpretation in *Kleber v. CareFusion Corporation*.

The U.S. Supreme Court has declined to review the appellate court decisions.

Currently, employers, especially those within the 7th and 11th Circuits, have a valid defense to claims under the ADEA where external job applicants allege they have been negatively impacted by hiring practices on the basis of their age.

H.R. 3992 would give external candidates the express right under federal law to bring these types of claims against employers.

This bill will include the job application process in ADEA's antidiscrimination provisions.

Specifically, this bill will make it unlawful “to limit, segregate, or classify . . . [job applicants] in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as . . . [a job applicant], because of such individual's age.”

According to the AARP, 1 in 4 workers age 45 and older have been subjected to negative comments about their age from supervisors or coworkers, and 76 percent see age discrimination as a hurdle to finding a new job.

In one University of California, Irvine, study, résumés were sent out on behalf of more than 40,000 fictitious applicants of different ages for thousands of low-skill jobs like janitors, administrative assistants and retail sales clerks in 12 cities.

This study found that the older the applicant was, the fewer callbacks the applicant received.

This study also found that age discrimination has the highest impact on women, who suffer more age discrimination than men starting in their 40s.

According to David Neumark, a professor of economics who oversaw the study, “[t]he evidence of age discrimination against women . . . pops out in every study” conducted on age discrimination.

Ageism is still very much present in our society, and it is important we acknowledge that we still have much work to do to correct this bias and give every job applicant a fair and equal opportunity when applying for a job.

Ms. BONAMICI. Mr. Speaker, I have no further speakers on the underlying bill, and I continue to reserve the balance of my time.

Mr. GOOD of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I have been a recruiter for a for-profit corporation. I did that for 15 years where I had the responsibility of recruiting on college campuses and hiring and making those decisions for a company for which I was depended on to find the absolute best workers, and that was not during a time when we had 10 million open jobs in the country and companies so desperate to find quality workers and fill those positions. I did this for a company that was vulnerable to the very consequences that we want to bring in greater capacity here today on this House floor.

Once again, we have got House Democrats trying to solve a nonexistent crisis instead of the many that they have created; massive spending, rising crime, gas prices going through the roof, increased inflation for groceries and other things, surging illegals across the border, firing cops and nurses and first responders because they don't get a vaccine that we are forcing upon them.

Instead of dealing with those, this majority is here focused instead on yet another manufactured problem with yet another leftist solution that has the added benefit from their perspective of paying off their trial lawyer donors.

They miss the point about disparate impact. As an example, a job recruiter goes to a college campus, spends several days recruiting, happens to only have typical younger, college-age workers apply, hires some of those workers, and now their trial lawyer friends would sue them because they didn't hire any older workers when no older workers applied because they used a typical standard practice for hiring entry-level workers. That is a real example.

They don't understand the difference between impact and treatment. We already have laws prohibiting the practice of disparate treatment on age discrimination basis.

This misnamed piece of legislation does nothing to truly protect older job applicants. Again, older job applicants are already protected by the law, and age discrimination is already illegal. Democrats just want to raise the stakes for their lawyer friends, making it easier to sue and the penalties more severe perhaps so that they can then donate more to Democrat campaigns.

Democrats don't want to acknowledge that sound economic policy, if they could recognize it, is what is good for older Americans; low taxes, less

regulation. That benefits older American job applicants just like everybody else, not more regulation, penalization of employees, and unnecessary victimization.

It has already been said, according to the Bureau of Labor Statistics, these are the facts. Don't let the facts get involved with bad legislation. I know, don't interfere. But the facts show, and I would like my colleagues across the aisle to explain the problem with the facts, that the number of workers age 75 and older in the workforce has quadrupled in the last 30 years, rising from 461,000 in 1988 to 1.8 million in 2018.

But, again, this legislation is about trial lawyers, not older Americans, and this bill would serve as yet another burden on small business owners.

In the age of online job postings and digital recruiting, this legislation would make employers vulnerable for any form of recruiting that brings in younger applicants. Online job boards, social media, even the simple act of posting a position online could be challenged under this bill simply because younger applicants tend to apply through those processes and search for jobs through those mechanisms.

The unintended—or, I suspect, the truly intended—consequence of this bill would be countless class action lawsuits against employers who are already struggling under Democrat efforts to cripple our economy.

Democrats have spent 2 years closing businesses with lockdowns, firing employees with their vaccine mandates, and paying more people to stay home. Here's another way: Let them benefit from a trial lawyer who sues on their behalf under this bill. Heck, even Members of this very body are staying home rather than attending committee hearings or voting in this Chamber. And now that America is trying to reopen in spite of them, Democrats want to have their trial lawyer friends sue more business employers and job creators.

What we do on this floor has consequences that reach into every corner of this great Nation; a sad and dangerous reality under this majority this year. But Democrats are relentless in their determination to pass legislation with a compassionate title—it sounds good—for a manufactured crisis and a policy that hurts small businesses and kills jobs. It is what they do.

As I said before, the Democrat majority has unveiled contempt for employers, businesses, and job creators, and they continue to perpetuate this “us against them” mind set between employees and employers or employers and job applicants. They truly believe that employers are hostile to and exploitive of their employees, and they need more regulation, again, when we have 10 million job openings and employers desperate to fill those positions so they can stay open.

The socialist America that the left clearly wants is not the America that our constituents and millions of Amer-

icans know and love; as the results in Virginia and New Jersey clearly showed last night, bipartisan results, because there are not that many Republicans in Virginia or New Jersey to deliver those results.

Mr. Speaker, I reserve the balance of my time.

Ms. BONAMICI. Mr. Speaker, I have no further speakers, and I am prepared to close. I do want to note with regard to my colleague's remarks, I believe there is a House rule about not impugning the motives of people who are here on this distinguished floor of the House of Representatives.

Older workers are suffering from a higher rate of long-term unemployment versus their younger peers. According to AARP, this has produced devastating consequences during the COVID-19 pandemic, as 74 percent of workers aged 40 to 65 who have lost a job in 2020 reported being unemployed for more than 6 months.

Again, Mr. Speaker, this is already the law of the land except for people in two Federal circuits here in the United States. This bill is intended to make a uniform law across the country.

Mr. Speaker, I reserve the balance of my time.

Mr. GOOD of Virginia. Mr. Speaker, I yield myself the balance of my time to close.

Discrimination is wrong, and it has been illegal in the United States for decades, as it should be.

Older workers are faring well in the workforce without the help from us in Congress, and they don't need a trial lawyer payoff—disguised as a win for older workers—that will threaten routine hiring practices, limit job opportunities, and create a tsunami of parasitic litigation.

We should ensure that our legislation does not have unintended consequences that are negative and harmful, but H.R. 3992 fails miserably in this regard when it comes to protecting older workers and ensuring job opportunities for current and future workers.

I strongly encourage my colleagues to vote “no” on H.R. 3992, and I yield back the balance of my time.

Ms. BONAMICI. Mr. Speaker, I yield myself the balance of my time to close.

Passing the bipartisan Protect Older Job Applicants Act should be a priority of every Member of Congress. Republicans and Democrats worked together just a few months ago to advance the Protecting Older Workers Against Discrimination Act. This bipartisan effort was a major step toward ensuring older workers can assert legal claims to hold employers accountable for disparate treatment that results in age discrimination.

However, we cannot defeat age discrimination in employment if we leave older job applicants behind. Without equal protections, older workers are still being denied job opportunities because of hiring practices that, while not intentionally discriminatory, ultimately exclude workers based on their age.



Providing job applicants with the tools to seek justice for discriminatory hiring practices is not just the right thing to do, it is the smart thing to do. In 2018 our economy missed out on as much as \$850 billion in gross domestic product because older workers who wished to switch jobs, grow in their jobs, or reenter the workforce were denied that opportunity.

The Protect Older Job Applicants Act addresses this gap in an important ADEA protection and helps older workers eliminate barriers that prevent them from fully contributing to our economy.

More broadly, this legislation will deliver on the promise of the ADEA and help ensure that all older workers, regardless of whether they are looking for a job or already have one, are equally protected against age discrimination under the law in every part of the country.

I want to again thank Ms. GARCIA for her leadership. I urge my colleagues to vote “yes,” and I yield back the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, thank you today, the House has an opportunity to support older workers by passing H.R. 3992, the Protect Older Job Applicants Act, introduced by Representative GARCIA of Texas.

While Americans are working later in life than ever before, many older workers are finding that their experience can count against them when applying for new jobs. Research shows that three-fourths of workers age 45 and older say age discrimination has eroded their confidence in finding a new job, and more than 40 percent of older job applicants have been asked for age-related information in the hiring process.

For more than half a century, older workers and older job applicants who face age discrimination were equally protected under the Age Discrimination in Employment Act, or A-D-E-A.

Earlier this year, House Republicans and Democrats came together to pass the Protecting Older Workers Against Discrimination Act, which strengthens protections for workers who allege disparate treatment based on age under the A-D-E-A.

Unfortunately, recent decisions in the Seventh and Eleventh Federal Circuit Courts have excluded job applicants from seeking recourse under the disparate impact provision of the A-D-E-A, even while maintaining that same protection for current employees.

This means older job applicants in the Seventh and Eleventh Circuits can only challenge age discrimination in hiring when they prove that an employer intended to discriminate based on age. They are unable to challenge hiring practices that appear neutral, but, in fact, result in a disproportionate, harmful impact on older workers.

Unfortunately, the Supreme Court declined to grant review of this matter. Therefore, it is up to Congress to clarify what has otherwise been the law of the land with regard to the coverage of job applicants under the A-D-E-A.

Current law provides recourse for job applicants in most jurisdictions, but not all. By amending the A-D-E-A, this legislation clarifies that older job applicants across the coun-

try can effectively seek justice when they are harmed by age discrimination in hiring.

The Administration issued a Statement of Administration Policy in support of this legislation. It states in part:

“Workplace age discrimination, including at the application stage, prevents people from fully accessing the American dream and limits the contributions that they can make to our shared prosperity. Ensuring equitable access to employment is a priority for the Administration. The Administration supports this legislation that protects older job applicants.”

The SPEAKER pro tempore. All time for debate has expired.

Each further amendment printed in part E of House Report 117-137 shall be considered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, may be withdrawn by the proponent at any time before the question is put thereon, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

□ 1715

AMENDMENT NO. 1 OFFERED BY MR. PAPPAS

The SPEAKER pro tempore. It is now in order to consider amendment No. 1 printed in part E of House Report 117-137.

Mr. PAPPAS. Mr. Speaker, I have an amendment at the desk.

The SPEAKER pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 1, after line 12, insert the following:

**SEC. 3. STUDY.**

Not later than 1 year after the date of the enactment of this Act, the Equal Employment Opportunity Commission shall conduct a study to determine the number of claims pending or filed with the Commission since 2015 under the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), including claims in closed cases, by job applicants who may have been adversely impacted by age discrimination in the job application process. The Chairman of the Commission shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, and shall make available to the public, a report that contains the results of the study, including recommendations for best practices to prevent, combat, and address age discrimination in the hiring process.

The SPEAKER pro tempore. Pursuant to House Resolution 716, the gentleman from New Hampshire (Mr. PAPPAS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from New Hampshire.

Mr. PAPPAS. Mr. Speaker, I rise in support of my amendment to require the Equal Employment Opportunity Commission to conduct a study on the number of job applicants impacted by age discrimination and issue recommendations on addressing age discrimination in the job application process.

Nearly half of older job applicants report being asked for age-related information when applying for a job, and three-quarters of workers over the age of 45 lack confidence in their ability to find a new job due to age discrimination.

This poses a significant challenge for workers in my home State of New Hampshire. As a State with an aging workforce, New Hampshire businesses are concerned about both how to attract talent and how to ensure that the institutional knowledge and experience of workers reaching retirement age is passed down. When workers are pushed out of our labor force by age discrimination or by the concern that they may face discrimination, our businesses and communities lose the benefit of their knowledge and experience.

Strengthening age discrimination laws is the right thing to do because it will both protect workers and also serve to help keep them in our labor force at a time when businesses are already struggling to attract talent. In our changing economy, we need to ensure that older workers continue to have opportunities available to them.

We must pass the Protect Older Job Applicants Act to clarify that job applicants can challenge discriminatory hiring practices under the Age Discrimination in Employment Act, and I urge my colleagues to support this commonsense amendment and help us gain a better understanding of the issues that older job applicants face when applying for jobs and the solutions that are needed to stop discriminatory practices.

Mr. Speaker, I include in the RECORD two letters in support of the underlying legislation, one from the American Federation of Government Employees and one from the Leadership Council of Aging Organizations.

AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, AFL-CIO,  
Washington, DC, September 28, 2021.

DEAR REPRESENTATIVE: On behalf of the American Federation of Government Employees, AFL-CIO (AFGE), which represents more than 700,000 federal and District of Columbia employees, I urge you to vote for H.R. 3992, the “Protect Older Job Applicants (POJA) Act of 2021.”

Under existing law, the Age Discrimination in Employment Act (ADEA) only applies to currently employed people seeking recourse in the face of employment discrimination based on age. The ADEA does not cover job applicants who experience age discrimination in hiring, including applicants for federal government positions.

H.R. 3992 extends the protections of the ADEA to external job applicants in addition to employees. Specifically, this legislation would allow job applicants to be able to bring disparate impact discrimination claims under the ADEA. The bill would protect older Americans against employment discrimination that prevent them from even getting a foot in the door. Considering the heightened long-term unemployment struggles older Americans have experienced during the COVID-19 pandemic, this bill is critically important.

Building on our support for H.R. 1230, the “Protecting Older Workers Against Discrimination Act,” AFGE is proud to be a

leader in the fight against all forms of employment discrimination including those affecting older Americans. Please support H.R. 3992, the "Protect Older Job Applicants (POJA) Act of 2021."

Sincerely,

JULIE N. TIPPENS,  
Director, Legislative Department.

LEADERSHIP COUNCIL  
OF AGING ORGANIZATIONS,  
Washington, DC, September 28, 2021.

DEAR MEMBER OF CONGRESS: The Leadership Council of Aging Organizations (LCAO) is a coalition of 69 national nonprofit organizations concerned with the well-being of America's older population and committed to representing their interests in the policy-making arena. We urge you to strengthen protections for older workers by voting for H.R. 3992, the Protect Older Job Applicants Act (POJA) of 2021. POJA would clarify that the Age Discrimination in Employment Act's (ADEA) prohibition against all forms of employment discrimination based on age covers individuals during the hiring phase of employment.

Age discrimination is pervasive and stubbornly entrenched. It often starts in the hiring process when employers circumvent anti-age discrimination laws by using such tactics as setting a maximum number of years of experience that a prospective employer will consider or setting up screening processes that exclude older applicants. In 2020, 78 percent of older workers reported having seen or experienced age discrimination in the workplace—a significant increase from 61 percent in 2018. Age discrimination is also pervasive among older women and African American workers—nearly two thirds of women and three-fourths of African Americans say they have seen or experienced workplace discrimination. The COVID-19 pandemic has wreaked havoc on employment for everyone, with older workers taking a harder hit. Those aged 55+ continue to experience long-term unemployment in greater numbers, with 55.3 percent of older jobseekers unemployed for 27 weeks or more as of June 2021, compared to 36 percent of younger workers. The rates were worse for older workers who were black, female, or who did not have a college degree.

Although the ADEA was meant to apply to all forms of age discrimination in hiring, recent court decisions have narrowly interpreted the applicability of ADEA's protections and have excluded job applicants who are subjected to hiring practices that have a discriminatory impact based on age, such as specifying a maximum number of years of experience. The Protect Older Job Applicants Act would clarify that older workers seeking employment should be protected from all forms of age discrimination in hiring.

We urge Congress to swiftly pass the Protect Older Job Applicants Act and clarify the ADEA's prohibition against hiring practices that have a discriminatory impact on older workers.

Sincerely,

KATIE SMITH SLOAN,  
Chair.

Mr. PAPPAS. Mr. Speaker, I reserve the balance of my time.

Mr. GOOD of Virginia. Mr. Speaker, I rise in opposition to the amendment.

The SPEAKER pro tempore. The gentleman is recognized for 5 minutes.

Mr. GOOD of Virginia. Mr. Speaker, unfortunately this amendment is a day late and a dollar short. It requires the Equal Employment Opportunity Commission to study the extent of dis-

crimination against job applicants based on age and make recommendations of best practices to prevent discrimination. This study could possibly yield useful information, but it is information we should have obtained before we vote on H.R. 3992.

Further, the amendment tacitly acknowledges that we need more information before we vote on this bill. This is classic ready, fire, aim.

The Committee on Education and Labor rushed to mark up H.R. 3992 only a month after it was introduced without holding a single hearing on the bill, a measure which is sorely lacking the examination that it deserves.

However, the information we do have more than suggests that this bill is unnecessary. The Age Discrimination in Employment Act already prohibits discrimination against job applicants because of age. Moreover, older workers have done well in the job market in recent decades. Again, according to the Bureau of Labor Statistics, for workers age 65 and older, employment tripled from 1988 to 2018, while employment among younger workers only grew by about a third.

This amendment, which requires a study after the underlying bill has already been signed into law, does nothing to address the problems in the bill.

H.R. 3992 will threaten routine recruitment and hiring practices, such as participating in college job fairs and posting to online job boards, at a time when nearly 8 million Americans are unemployed and employers are struggling to find workers to fill the more than 10 million available jobs.

I oppose this amendment, which is a day late and a dollar short, and I strongly oppose the underlying bill.

Mr. Speaker, I yield back the balance of my time.

Mr. PAPPAS. Mr. Speaker, I will correct the record again on the fact that the committee did hold a hearing on this subject on March 18, 2021.

At that hearing, Laurie McCann, a senior attorney at AARP Foundation, testified about the erosion of protections for older workers in judicial decisions under the ADEA, including specific mention in her testimony of the Seventh Circuit's Kleber decision and its harmful impact on applicants. So, that is well-documented.

This particular amendment seeks to give us additional information going forward that would be valuable in understanding the plight of older job applicants.

Mr. Speaker, I yield such time as she may consume to the gentlewoman from Illinois (Ms. NEWMAN).

Ms. NEWMAN. Mr. Speaker, I thank the gentleman for yielding.

I rise today, Mr. Speaker, on behalf of the millions of older workers who desperately need our help.

Last year, we saw older Americans leave the workforce more than we ever have before, in fact, more than in the last seven decades.

We are seeing tens of thousands of workers with the right qualifications

for a job being turned away all because they are 50, maybe even 40, and considered too old. In fact, 76 percent of older American workers reported seeing age discrimination when trying to obtain a job.

Mr. Speaker, 76 percent. That is clearly unacceptable.

We need to pass the Protect Older Job Applicants Act to ensure America's older workers are finally protected from discrimination. But before we can solve that problem, we have to fully understand it.

That is why included in this bill is an amendment I put forth to ensure the Federal Government has the resources it needs to study just how many job applicants have been discriminated against based on age. By doing so, we can better provide recommendations and best practices to further prevent this issue because when we lift up all of our older workers, we lift up our entire economy.

Mr. PAPPAS. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Texas (Ms. GARCIA), the cosponsor of the underlying legislation.

Ms. GARCIA of Texas. Mr. Speaker, I rise in support of the Pappas and Newman amendment. This amendment from my colleagues just enhances this bill.

As a former administrative law judge for the Equal Employment Opportunity Commission in the Houston region, I can tell you personally that the type of information that would be gathered by the EEOC on the number of job applicants impacted by age discrimination on the job and all the issues that they have related to their applications would be very helpful.

It would not only be helpful to the administrative law judges at the EEOC; it would be helpful for judges that would finally hear the cases in court if they go to court. It would be helpful for research. It would be helpful for advocacy groups. This information would be vital, again, to help us in Congress to seek better ways to improve and work best on prevention and combating and addressing age discrimination in the hiring process.

Mr. Speaker, there is some discussion on the other side of the aisle that this is a remedy for a problem that doesn't exist. Let me tell you, if you talk to advocacy groups, discrimination is alive and well.

We need this legislation. We need this amendment. I urge adoption.

Mr. PAPPAS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the amendment.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. GOOD of Virginia. Mr. Speaker, on that I demand the yeas and nays.

The SPEAKER pro tempore. Pursuant to section 3(s) of House Resolution 8, the yeas and nays are ordered.

Pursuant to clause 8 of rule XX, further proceedings on this question are postponed.



AMENDMENT NO. 2 OFFERED BY MR. KELLER

The SPEAKER pro tempore. It is now in order to consider amendment No. 2 printed in part E of House Report 117-137.

Mr. KELLER. Mr. Speaker, I have an amendment at the desk.

The SPEAKER pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 1, after line 12, insert the following:

**SEC. 3. DELAYED EFFECTIVE DATE OF AMENDMENTS.**

(a) STUDY REQUIRED.—Subject to subsection (b), the amendments made by this Act shall not take effect until the date the Government Accountability Office reports to Congress the results of a study such Office carries out to determine whether not allowing claims of disparate impact discrimination by applicants for employment under the Age Discrimination in Employment Act of 1967 (20 U.S.C. 621 et seq.) has a significant negative impact on such applicants.

(b) STUDY RESULTS.—If the results of the study carried out under subsection (a) show there is not a significant negative impact of the kind described in such subsection on applicants for employment, then the amendments made by this Act shall not take effect.

The SPEAKER pro tempore. Pursuant to House Resolution 716, the gentleman from Pennsylvania (Mr. KELLER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Pennsylvania.

Mr. KELLER. Mr. Speaker, before considering any legislation, the House should first make a determination about whether the proposal is actually needed and then should always carefully study the pending legislation to determine whether it will adequately and positively address the issue it purports to address. Unfortunately, Democrats have failed on both counts with H.R. 3992.

The bill was introduced only 8 legislative days before the Committee on Education and Labor markup, and the committee did not hold a hearing on the legislation.

As such, we are flying blind as we consider H.R. 3992 today.

H.R. 3992 authorizes disparate impact claims for job applicants under the Age Discrimination in Employment Act, and it has wide-ranging and damaging implications that need thorough examination.

Significantly, we have had no data on whether excluding job applicants from disparate impact coverage under the ADEA has a significant negative impact on older job applicants. Indeed, to date, there have been zero circuit court decisions ruling that the ADEA authorizes job applicants to sue under a disparate impact theory.

Further, we have no information about the numerous effects this sweeping bill would have on job seekers and businessowners. As we have heard during this debate, H.R. 3992 could needlessly interfere with routine recruitment practices, such as college recruiting, apprenticeship programs, and online job postings.

Given the appalling lack of data on the issue and the rush by Democrats to pass the bill, this amendment simply requires the GAO to conduct a needed study on whether excluding job applicants from disparate impact coverage under the ADEA has a significant negative impact on older job applicants. If the study finds no such negative impact, the bill would not go into effect.

This House should not legislate in the dark. Unfortunately, this is exactly what we are doing here today.

This amendment will shed some much-needed light on a far-reaching bill that has not received proper examination.

Mr. Speaker, I reserve the balance of my time.

Ms. GARCIA of Texas. Mr. Speaker, I rise in opposition to the amendment.

The SPEAKER pro tempore. The gentleman is recognized for 5 minutes.

Ms. GARCIA of Texas. Mr. Speaker, before I begin, let me say again for the third time that, in fact, the committee did have a hearing on this subject. On March 18, 2021, the Subcommittees on Civil Rights and Human Services and Workforce Protections held a hearing titled “Fighting for Fairness: Examining Legislation to Confront Workplace Discrimination.”

At that hearing, Laurie McCann, a senior attorney at AARP Foundation, testified about the erosion of protections for older workers in judicial decisions under the ADA, including specific mention in her testimony of the Seventh Circuit’s Kleber decision and its harmful impact on older applicants.

Mr. Speaker, this amendment prevents the legislation from going into effect unless the GAO finds that there have been negative impacts. This is simply a delay tactic with no end date in sight.

The reason we are here today is precisely because we do have a problem due to the circuit court decisions which cut off access to the courts for job applicants seeking relief under the ADEA.

□ 1730

The Supreme Court has denied cert to review this matter.

We have heard from AARP, one of the Nation’s preeminent authorities on age discrimination, which has advised Congress that these court decisions in the 7th and 11th Circuits are not only at odds with the intent of the ADEA, but that the courthouse doors have been unfairly slammed shut to deserving individuals seeking relief.

Testimony before the Subcommittee on Civil Rights and Human Services earlier this year noted that barring older applicants from seeking relief for disparate impact discrimination is a problem, and that without clarifying the ADEA, similar plaintiffs will not be able to seek justice under the law.

For example, in the 7th Circuit case, *Kleber v. CareFusion Corporation*, Mr. Kleber, a 58-year-old attorney with considerable corporate law experience

applied for an in-house counsel position.

The position required applicants to have no more than 7 years of relevant legal experience, which effectively means that it freezes out job applicants that were over age 40. Again, on its face it may look neutral, but if you say, “no one with more than 7 years’ experience,” that cuts out a lot of people.

Despite his significant prior experience in corporate law, Kleber was denied the opportunity to even interview for the job, since the experience limit was effectively a proxy for age.

The 7th Circuit held that because Mr. Kleber was an outside job applicant rather than an employee seeking a new position from within the company, he was barred from bringing a disparate impact claim. This turns the entire purpose of the ADEA on its head, which is to remedy age discrimination for both jobseekers and employees. Furthermore, we know generalized age discrimination is not isolated.

In 2017, researchers for the Federal Reserve Bank of San Francisco sent 40,000 resumes of applicants of all ages to 13,000 job openings across 12 cities. They found that older workers received substantially fewer callbacks from employers for job interviews and showed particular harm for older women applicants.

We do not need another study to tell us what we already know. Older job applicants are subjected to age discrimination when seeking employment and that an effective remedy is needed when that conduct lacks justification.

Madam Speaker, finally, this amendment would indefinitely delay implementation of this bill because there is no deadline for GAO to conduct a study and report back to Congress.

Would we even see the results of this study and when? Again, this is simply a delay tactic. We already have all the evidence we need to know that it is timely for Congress to act and to pass this legislation to protect our older job applicants.

Madam Speaker, I urge my colleagues to vote “no” on this amendment and “yes” on the underlying bill.

Madam Speaker, I yield back the balance of my time.

Mr. KELLER. Madam Speaker, I heard my colleague from Texas say that they have had a hearing on the subject. Well, our contention is not the subject, but the bill. There have been zero hearings on this bill, which was introduced 8 legislative days ago.

So I don’t know why there is a rush to judgment on whether we should vote on this or not without making sure we understand all the issues. And since the Democrats are unwilling to do that, this amendment makes perfect sense, if you don’t want to examine it and do that beforehand and do the proper work up front. Let’s make sure before this takes effect and could harm older Americans or job creators, we should understand the impacts and what it means.

So you can sit here and correct the RECORD all you want. What you think you are doing when you talk about the subject, we are talking about the legislation. And we need to know exactly what this legislation is going to do and how it is going to impact older Americans and our job creators.

Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Ms. BOURDEAUX). Pursuant to House Resolution 716, the previous question is ordered on the amendment offered by the gentleman from Pennsylvania (Mr. KELLER).

The question is on the amendment.

The question was taken; and the Speaker pro tempore announced that the yeas appear to have it.

Mr. KELLER. Madam Speaker, on that I demand the yeas and nays.

The SPEAKER pro tempore. Pursuant to section 3(s) of House Resolution 8, the yeas and nays are ordered.

Pursuant to clause 8 of rule XX, further proceedings on this question are postponed.

Pursuant to clause 1(c) of rule XIX, further consideration on H.R. 3992 is postponed.

#### BUILD BACK BETTER NOW

(Ms. JACKSON LEE asked and was given permission to address the House for 1 minute.)

Ms. JACKSON LEE. Madam Speaker, I just wanted to be able to really inform the American people and to let my friends on the other side of the aisle know what they are missing out on. And that is the greatest effort to improve the quality of life of Americans and raise their economic level of living since Social Security under Franklin Delano Roosevelt, since the Great Society under Lyndon Baines Johnson.

Working moms having the ability to not pay more than 7 percent of their income to get childcare. Young—just beginning school, three years old and four years old—and not one three- or four-year-old being left out of pre-K. Giving them the intellectual staircase to make a difference in their lives.

And in the State of Texas—the poster child for the uninsured—oh, my goodness, how we have suffered: 766,000 uninsured refuse to take the expanded Medicaid. And now we have the ability to give every person healthcare. And when I spoke to a group that was supported by the American Heart Association, they applauded.

Build back better is what we need to do and we need to do it now and pass both bills, the Bipartisan Infrastructure Bill—changing lives in America.

#### NATIONALIZED ELEMENTARY SCHOOLS

(Mr. LAMALFA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAMALFA. Madam Speaker, one of the many concerning provisions in the Democrat's reconciliation bill is nationalization of our elementary schools.

The new childcare provisions drastically expand Federal oversight of schools, allowing the Biden administration to determine the education standards for three- to four-year-olds, and places no limit on what additional requirements Democrats can impose upon each States' primary education system.

This bill also delegitimizes family and faith-based education, by limiting funded preschool options to only facilities which teach curriculum that the Biden administration approves of.

The Secretary of Education recently told Congress that parents were not "the primary stakeholder" in "determining educational programming." Really? This means Democrats believe government knows better than what parents think is right for their children.

Allowing the nationalization of elementary schools will further politicize what our kids are being taught, such as divisive ideologies, like critical race theory, or exposed to very inappropriate instructional materials that I can't speak of here.

Madam Speaker, I cannot support a bill that would hand over more of our powers to the government, in an era where too many freedoms have already been relinquished.

#### DEMOCRATS NATIONALIZE EDUCATION

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 2021, the gentleman from Illinois (Mrs. MILLER) is recognized for 60 minutes as the designee of the minority leader.

##### GENERAL LEAVE

Mrs. MILLER of Illinois. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and submit extraneous materials.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mrs. MILLER of Illinois. Madam Speaker, last month the chair of the House Budget Committee, a member of Democratic leadership, told me during an education committee meeting that parents don't know what is best for their children. He said, "We need to protect kids from their parents."

Last night, in some of the bluest parts of our country, parents disagreed. Last night was a resounding victory for parental rights and the future of our country. Parents are fed up—where I am from, we say riled up. They bravely stood up against the Marxist ideology that has taken over the radical left.

Parents rejected racist critical race theory, teaching children that they are

victims. They rejected a perverted sexualized curriculum forced upon young children. Parts of this curriculum are so perverted that if you actually talked about it on the airwaves, you would be fined for indecency. Yet, this is what is included in some of our elementary education curriculum. And they rejected a transgender political agenda that puts young girls in danger in a girls' restroom and will be the end of girls' athletics.

In addition, they are being taught to hate our country, the land of freedom and opportunity. We want our children to be smart, to master the core subjects, and to love our neighbors and our country. Last night was only the beginning—a revolution of regular people. Never estimate the power of regular people to defend their country and their children and their freedom. American values will always defeat Marxist ideology.

The message from parents is loud and clear: Don't mess with our kids.

Madam Speaker, I yield to the gentleman from Wisconsin (Mr. FITZGERALD.)

Mr. FITZGERALD. Madam Speaker, I thank Congresswoman MILLER for yielding.

Madam Speaker, our Nation's students are the future. They are our future police officers, doctors, technicians, and manufacturers. And to accomplish this, students will need localized education that is sensitive to the thoughts and concerns of students, parents, and teachers. That is the system we have had in the United States of America for many years.

But lo and behold, inside this multi-trillion-dollar infrastructure budget reconciliation package that is being crafted right now, as we stand here this evening, there are plans—and I don't want to blow this out of proportion—to nationalize and radicalize our Nation's education system.

The Washington takeover of education would give the Biden administration unprecedented levels of Federal oversight and the ability to approve early education standards and provide childcare to wealthy families while pushing small providers out of the market.

This proposal comes at a time when across the country parents are already feeling a little bit cast aside or excluded from some of the major decisions that are being made in their children's education.

Students are being taught divisive and harmful curriculum. The one that is obviously at the forefront is CRT. When parents come to their local school board meetings to express their concerns, they have been met with hostility, and in some cases—extreme cases—they arrested a parent. It is crazy.

This is especially important for parents in Wisconsin, my home State. Parents are fed up with the bureaucracy telling them they—not the parents—know better. And when parents ask